

Message Text

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ACTION DLOS-09

INFO OCT-01 ISO-00 AF-10 ARA-10 EA-07 EUR-12 NEA-10
FEA-01 ACDA-07 AGRE-00 AID-05 CEA-01 CEQ-01 CG-00
CIAE-00 EPG-02 COME-00 DODE-00 DOTE-00 EB-07
EPA-01 ERDA-05 FMC-01 TRSE-00 H-01 INR-07 INT-05
IO-13 JUSE-00 L-03 NSAE-00 NSC-05 NSF-01 OES-07
OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15 USIA-06
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R 112113Z JUL 77

FM USMISSION USUN NEW YORK

TO SECSTATE WASHDC 4420

C O N F I D E N T I A L SECTION 1 OF 2 USUN 2202

FROM: LOS DEL

E.O. 11652: GDS

TAGS: PLOS

SUBJ: SITREP JULY 7, 1977

1. COMMITTEE 1. THE DEBATE ON DISPUTE SETTLEMENT CONSISTED MAINLY OF RESTATEMENTS OF NATIONAL POSITIONS. DEVELOPING COUNTRIES (PERU, TUNISIA, CHILE, INDIA) SUPPORTED THE EVENSEN FORMULATIONS OF ARTICLES 33-39, INsofar AS THEY CIRCUMSCRIBED THE JURISDICTION OF THE TRIBUNAL BY PROHIBITING REVIEW OF RULES AND REGULATIONS OR ANY OTHER DISCRETIONARY ACTS OF THE AUTHORITY. THE EVENSEN TEXT STATES THAT THE SEABED CHAMBER SHALL NOT PRONOUNCE ITSELF ON ANY QUESTION CONCERNING THE CONFORMITY WITH THE PROVISIONS OF THE CONVENTION OF ANY RULES AND REGULATIONS, OR PROCEDURES ADOPTED BY THE COUNCIL OR BY THE ASSEMBLY, BUT SHALL CONFINE ITS REVIEW OF SUCH TO THE "LEGALITY OF THE MANNER IN WHICH THEY ARE APPLIED TO INDIVIDUAL CASES." LDCS OBJECTED, HOWEVER, TO THE PROVISION IN ARTICLE 33 GIVING THE SEABED DISPUTE CHAMBER

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JURISDICTION RELATING TO CONCLUSION OF ANY CONTRACT, ITS INTERPRETATION OR APPLICATION.

2. THE NETHERLANDS (RIPHAGEN) CITED THE EXAMPLE OF THE EUROPEAN COAL AND STEEL COMMUNITY, IN WHICH THE COURT IS EMPOWERED TO RULE ON ISSUES CONCERNING WHETHER THE AUTHORITY ACTED WITHIN THE RANGE OF ITS MANDATED DIS-

CRETIONARY AUTHORITY. THE COURT COULD NOT, HOWEVER, EVALUATE ECONOMIC FACTS OR OTHER CIRCUMSTANCES ON WHICH THE AUTHORITY BASED ITS DECISIONS. THIS PATTERN, RIPHAGEN SAID, COULD BE APPLICABLE TO THE AUTHORITY.

3. THE U.S. (SOHN) REINFORCED THE DUTCH INTERVENTION BY DRAWING A DISTINCTION BETWEEN DISCRETIONARY ACTS OF THE AUTHORITY WITHIN THE LIMITS OF THE CONVENTION AND ARBITRARY ACTS OUTSIDE THOSE LIMITS. THE FORMER WOULD NOT BE JUSTICIABLE, BUT THE LATTER WOULD. SOHN ALSO SUGGESTED THAT ISSUES CONCERNING INTERPRETATION OF COMMERCIAL CONTRACTS SHOULD BE SUBJECT TO ARBITRATION AT THE REQUEST OF ANY ONE OF THE PARTIES RATHER THAN TO THE JURISDICTION OF THE TRIBUNAL.

4. THE TECHNICAL GROUP ON FINANCIAL ARRANGEMENTS MET AGAIN TO DISCUSS BAILEY'S PARTIAL REVISION TO HIS WORKING PAPER. THE REVISIONS STATE EXPLICITLY THAT THE FINANCIAL TERMS IN ANNEX I PARA 9 REFER ONLY TO CONTACTS LET ON THE NONRESERVED PORTION OF THE SEABED AREA. BAILEY ALSO PROPOSED A \$250,000 APPLICATION FEE; A \$1 MILLION ANNUAL FIXED MINING CHARGE WHICH WOULD BE PAYABLE BEGINNING ON THE FOURTH YEAR AFTER CONTACT SIGNING AND WOULD TERMINATE UPON COMMENCEMENT OF PRODUCTION; A 15PERCENT ROYALTY ON THE VALUE OF PROCESSED METALS. BAILEY DID NOT FILL IN THE BLANKS ON THE PROFIT SHARING PROVISIONS.
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5. THE U.S. (DARMAN), SUPPORTED BY UK (IVEY), FRG (MULLER, AND CANADA (GUILLEMETTE) SHARPLY SCORED THE BAILEY TEXT, ESPECIALLY ITS FAILURE TO DEAL WITH THE FINANCIAL OBLIGATIONS OF THE ENTERPRISE AND THE OUTRAGEOUS 15PERCENT ROYALTY WHICH PRESUMABLY WOULD BE ADDITIVE TO PROFIT SHARING. SINCE BAILEY HAS PROVEN IMPERVIOUS TO FORCEFUL ARGUMENTS IN THE PAST, IT REMAINS TO BE SEEN WHETHER HE WAS MUCH IMPRESSED BY THE LATEST SALVO FROM THE INDUSTRIAL COUNTRIES.

6. IN THE COURSE OF LIVELY DEBATE ON THE APPLICABILITY OF FINANCIAL TERMS TO THE ENTERPRISE, THE U.S. PROPOSED THE FOLLOWING NEW SUBPARAGRAPH DEALING WITH THAT QUESTION: "IN LIEU OF THE ABOVE SYSTEM OF PAYMENTS, ALL NET DISPOSABLE INCOME GENERATED BY THE ENTERPRISE, EXCEPT AS PROVIDED IN ANNEX II PARAGRAPH 5(G), SHALL BE TRANSFERRED QUARTERLY TO THE AUTHORITY WHICH SHALL DETERMINE THE APPORTIONMENT AND DISTRIBUTION OF SUCH PROCEEDS TO THE ENTERPRISE AND TO STATES PARTIES IN ACCORDANCE WITH ARTICLE 26 PARAGRAPHS 2(VI), 2(X), 2(XI BIS), AND ARTICLE 28 PARAGRAPHS 2 (XI BIS), 2 (XIII),

2 (XIII BIS)." SURPRISINGLY, NONE OF THE LDC REPRESENTATIVES (INDIA, PAPUA NEW GUINEA, BRAZIL, CHILE, AND UNCTAD) VOICED OBJECTIONS TO THIS FORMULA. INDIA (VARADHAN) SAID TENTATIVELY THAT THE U.S. LANGUAGE WAS ACCEPTABLE AND COINCIDED WITH HIS OWN IDEAS. IT APPEARS, THEREFORE, THAT LDC OBJECTIONS TO APPLYING THE SAME FINANCIAL ARRANGEMENTS TO THE ENTERPRISE AS TO CONTRACTORS MAY NOT REFLECT A DESIGN TO EXEMPT THE ENTERPRISE FROM REVENUE SHARING, BUT RATHER A CONCEPTUAL RELUCTANCE TO SEE THE ENTERPRISE LUMPED TOGETHER IN THE SAME CATEGORY WITH CONTRACTORS.

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FM USMISSION USUN NEW YORK
TO SECSTATE WASHDC 4421

C O N F I D E N T I A L SECTION 2 OF 2 USUN 2202

FROM: LOS DEL

7. THE EFFECT OF THE U.S. PROPOSAL WOULD BE TO EXEMPT THE ENTERPRISE FROM INITIAL APPLICATION FEES, AND THE ANNUAL FIXED MINING CHARGE. BUT THESE INITIAL EXEMPTIONS COULD BE EVENTUALLY OFFSET AFTER THE ENTERPRISE COMMENCED COMMERCIAL PRODUCTION, SINCE ALL NET DISPOSABLE INCOME, NOT JUST A SPECIFIC ROYALTY OR PROFIT SHARE, WOULD BE TURNED OVER TO THE AUTHORITY FOR DISPOSITION THROUGH THE BUDGET PROCESS.

8. COMMITTEE II. CONSULTATIVE GROUP II (CONTINENTAL SHELF/REVENUE SHARING) MET IN ITS FINAL SESSION TODAY AND FOCUSED EXCLUSIVELY ON THE QUESTION OF THE DEFINITION OF THE OUTER LIMIT OF THE CONTINENTAL SHELF. NO NOVEL AMENDMENTS OR PROPOSALS WERE PUT FORWARD; THE

EXCHANGE OF VIEWS CENTERED UNIQUELY ON THE
RELATIVE MERITS OF THE IRISH FORMULA AS COMPARED TO
THOSE OF THE ANONYMOUS (JAPANESE) PROPOSAL. IRELAND,
AUSTRALIA, ARGENTINA, CANADA, INDIA AND THE UK
VIGOROUSLY DEFENDED THE IRISH FORMULA WHILE JAPAN
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STAUNCHLY ADVOCATED THE ANONYMOUS (JAPANESE) FORMULATION.
JAPAN DID INTRODUCE A MODIFICATION IN ITS
"ANONYMOUS" PROPOSAL TO INCLUDE THE 2,500-METRE ISOBATH
(ALONG WITH THE PROPOSED HEDBERG DEFINITION) AS A SUB-
SIDIARY CRITERIA, A (SECONDARY METHOD WHICH IT HAD VER-
BALLY ALLUDED TO DURING A PREVIOUS MEETING).
THE CHAIRMAN (NJENGA) CLOSED THE MEETING BY NOTING
THAT HE WOULD REPORT THE EXISTING DEADLOCK ON THE ISSUE
OF THE SHELF TO THE CHAIRMAN (AGUILAR).

9. COMMITTEE III. PROTECTION AND PRESERVATION OF THE
MARINE ENVIRONMENT. THE INFORMAL WORKING GROUP UNDER
CHAIRMAN VALLARTA (MEXICO) DISCUSSED ARTICLE 29 (PRE-
VENTION OF VESSELS FROM LEAVING PORT IN AN UNSEAWORTHY
CONDITION). FRANCE PROPOSED AN AMENDMENT REQUIRING THE
PORT STATE TO PREVENT A SHIP FROM SAILING EXCEPT TO GO
TO A REPAIR YARD IF ITS ASCERTAINS THAT THE SHIP IS UN-
SEAWORTHY AND THEREBY THREATENS TO CAUSE POLLUTION. THE
PORT STATE WOULD BE REQUIRED TO RELEASE THE VESSEL
IMMEDIATELY UPON RECTIFICATION OF THE UNSEAWORTHY CONDI-
TION.

10. FRANCE ACCEPTED A CANADIAN AMENDMENT TO INSERT IN
THEIR PROPOSAL THE WORDING OF THE EXISTING ARTICLE,
ALLOWING THIRD STATES TO REQUEST INVESTIGATION OF A
VESSEL. THE PROPOSAL WITH THIS AMENDMENT RECEIVED SUP-
PORT FROM THE US, UK, CANADA, SINGAPORE, EGYPT, JAPAN,
PORTUGAL, GREECE, AND ISRAEL. THE USSR, POLAND, BULGARIA,
GABON AND FRG WERE OPPOSED TO A PORT STATE OBLIGATION
TO PREVENT SHIPS FROM SAILING AND PROPOSED ALTERNATIVE
FORMULAS ALLOWING, BUT NOT REQUIRING, THIS RESULT. THE
DISCUSSION ENDED INCONCLUSIVELY.

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11. INDIA INTRODUCED AN AMENDMENT TO ARTICLES 23 AND
24 (ENFORCEMENT OF NATIONAL LAWS REGARDING POLLUTION
FROM LAND-BASED SOURCES AND CONTINENTAL SHELF ACTIVITIES,
RESPECTIVELY) TO MAKE CLEAR THE STATES ARE NOT BOUND TO

ADOPT AND ENFORCE LAWS IMPLEMENTING TREATIES TO WHICH
THEY ARE NOT PARTY. INDIA REFUSED TO ACCEPT THE CHAIR-
MAN'S EXPLANATION THAT THE WORD "APPLICABLE" BEFORE
"INTERNATIONAL RULES AND STANDARDS" IN THE RSNT ADE-
QUATELY EXPRESSED THIS MEANING. THE U.S. PROPOSED TO
SOLVE THE PROBLEM BY SIMPLY REQUIRING ENFORCEMENT OF
ALL NATIONAL REGULATIONS ESTABLISHED PURSUANT TO THE
STANDARD-SETTING ARTICLES (17 AND 18). THIS WAS AC-
CEPTED BY ALL DELEGATIONS EXCEPT THE USSR AND THE
MEETING ENDED WITHOUT CONSENSUS.
MCHENRY

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